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7 *Attorneys for Defendants*
8 *Perkins Coie, LLP and Lowell Ness*

9 **UNITED STATES BANKRUPTCY COURT**
10 **EASTERN DISTRICT OF WASHINGTON**

11 In re:

12 **GIGA WATT, Inc., a Washington**
13 **Corporation,**

14 Debtor.

15 **MARK D. WALDRON, as Chapter 7**
16 **Trustee;**

17 Plaintiff,

18 v.

19 **PERKINS COIE, LLP, a Washington**
20 **limited liability partnership,**
21 **LOWELL NESS, individual and**
22 **California resident, GIGA WATT,**
23 **PTE., LTD a Singapore corporation,**
24 **and ANDREY KUZENNY, a citizen of**
25 **the Russian Federation,**

26 Defendants,

Case No. 18-03197-FPC11
Chapter 11

Adversary Case No. 20-80031-FPC

**DEFENDANTS' INITIAL
SCHEDULING REPORT AND
EXPEDITED MOTION FOR
CONTINUANCE OF DEADLINE TO
FILE SCHEDULING CONFERENCE
REPORT AND CONTINUANCE OF
SCHEDULING CONFERENCE
PENDING RULING BY THE
DISTRICT COURT ON
DEFENDANTS' MOTION FOR
ORDER GRANTING
WITHDRAWAL OF THE DISTRICT
COURT'S REFERENCE PURSUANT
TO 28 U.S.C. § 157**

1
2 The Defendants Perkins Coie, LLP, and Lowell Ness (“Defendants”) file this
3 Initial Scheduling Report for the Court’s consideration at the telephonic Scheduling
4 Conference set for January 12, 2021 at 1:30 PM. In conjunction with this Initial
5 Status Report, the Defendants move the Court for an Order Continuing Deadline to
6 File Scheduling Report and the Scheduling Conference Pending Ruling from the
7 District Court on Defendants’ Motion for Order Granting Withdrawal of the District
8 Court’s Reference Pursuant to 28 U.S.C. § 157 (the “Motion For Continuance”).
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11 **I. MOTION**

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13 The Motion for Continuance is requested to be considered on an expedited basis
14 by the Court pursuant to Local Bankruptcy Rule 2002 (c) (2) at the Scheduling
15 Conference set for January 12, 2021. The Motion for Continuance is based on Federal
16 Rules of Bankruptcy Procedure 2002, 9006, and 9013, as wells as Local Bankruptcy
17 Rule 5071, as well as the Defendants’ Motion for Order Granting Withdrawal of the
18 District Court’s Reference Pursuant to 28 U.S.C. §157 (“Motion to Withdraw
19 Reference”) (ECF No. 17) and the Memorandum in Support of Defendant’s Motion
20 For Order Granting Withdrawal of The District Court’s Reference Pursuant to 28
21 U.S.C. §157 (ECF No. 18) which are incorporated herein by reference. The
22 Defendants request that the Court continue the final Scheduling Conference Report
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1 filing date and Scheduling Conference to a future date after the United States District
2 Court for the Eastern District of Washington rules upon the pending Motion to
3 Withdraw Reference.
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5 **II. SCHEDULING CONFERENCE REPORT**

6 The Plaintiff filed the above captioned Adversary Proceeding on November 19,
7 2020 (ECF No. 16). On November 19, 2020, a “Notice of Scheduling Conference.
8 Written Report due: January 7, 2021. Scheduling Conference scheduled 1/12/2021 at
9 01:30 PM” was issued by the Court (ECF No. 4). A summons was re-issued on
10 December 2, 2020 (ECF No. 12), and the Adversary Complaint and re-issued
11 summons were subsequently served upon Defendants.
12

13 On December 23, 2020, the Defendants and Plaintiff held an initial telephone
14 conference to discuss procedural and other matters concerning this Adversary
15 Proceeding, including an anticipated motion to withdraw the reference. On December
16 31, 2020, the Defendants filed and served the Motion to Withdraw Reference (ECF
17 No. 17) and Memorandum in support of Defendants’ Motion For Order Granting
18 Withdrawal of the District Court’s Reference (ECF No. 18). In accordance with Local
19 Bankruptcy Rule 5011-1, the briefing schedule has commenced, and the matter will be
20 decided by the United States District Court for the Eastern District of Washington
21 (“District Court”) LBR 5011-1, with the Plaintiff’s responsive pleading being due
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1 January 14, 2021. The Defendants will file their answers and affirmative defenses to
2 the Adversary Complaint prior to the Scheduling Conference of January 12, 2021.

3 4 **II. BASIS FOR CONTINUANCE**

5 The Defendants acknowledge it is not uncommon for bankruptcy courts to
6 retain jurisdiction in run-of the mill adversary proceedings that implicate concepts or
7 that can be quickly and efficiently resolved. This Adversary Proceeding, however, is
8 not such a case. The present case involves complex issues of state law, the resolution
9 of which will not require the application of the Bankruptcy Code. Nor are the issues
10 to be resolved deeply entangled in the underlying bankruptcy proceeding. In fact, no
11 bankruptcy issues are implicated at all. The Defendants, in summary, have moved to
12 withdraw the reference based upon:
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14

- 15 • The Adversary Proceeding Is Not Core.
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- 17 • The Defendants Do Not Consent To Final Orders or Judgments Being
- 18 Entered By the Bankruptcy Court.
- 19
- 20 • The Defendants Have a Right To Jury Trial and Do Not Consent to Jury
- 21 Trial Before the Bankruptcy Court.
- 22
- 23 • The related class action: *Jun Dam v. Perkins Coie, LLP, et. al., United*
24 *States District Court Eastern District of Washington, Case No. 20-cv-00464-*
25 *SAB* was filed on December 12, 2020 and is pending before Judge Bastian.
- 26

1 The Class Action Complaint is premised upon similar, if not substantially
2 identical, claims and causes of action to this Adversary Proceeding.

3 The Defendants assert: (1) it is highly likely that the Defendants will prevail
4 on the merits of the Motion to Withdraw in the District Court; (2) the pending related
5 class action case in District Court will impact the scheduling of procedural matters,
6 discovery, and motion practice associated with this Adversary Proceeding; and (3) if
7 the Motion to Withdraw is granted, the assigned District Court judge will enter his or
8 her own scheduling order based upon their procedures and calendar.
9

10 Based upon the procedural posture of this Adversary Proceeding, the pending
11 Motion to Withdraw Reference, and in the interest of judicial efficiency and
12 economy, the Defendants request that the deadline for the next Joint Scheduling
13 Conference Report and Scheduling Conference in the Bankruptcy Court continued
14 until after the District Court enters its order granting or denying the Motion To
15 Withdraw the Reference.
16

17 DATED THIS 7th day of January, 2021.
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19 MUNDING, P.S.
20

21 /s/ John D. Munding
22

23 John D. Munding, WSBA No. 21734
24 Attorney for Defendants
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